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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 136

LUDWIG KOENIGER,

Petitioner,

against

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

EDWARD V. BRODERICK,
Counsel for Petitioner.

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To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Ludwig Koeniger, respectfully prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, affirming a judgment of conviction rendered against him in a criminal case in the United States District Court for the Eastern District of New York.

Jurisdiction of This Court

The judgment of affirmance of the United States Circuit Court of Appeals for the Second Circuit was rendered on April 27th, 1945 and the order for mandate, which is

the decree sought to be reviewed, is dated May 14th, 1945 (R. 125). This petition is filed within thirty days from the date thereof as required by Rule 11 of the Rules of Practice and Procedure in criminal cases after plea of guilty, verdict or finding of guilt, established under authority of Title 18, U. S. C. A., Sections 687, 688.

The jurisdiction of this Court is conferred by 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938), U. S. Code, Title 28, Section 347.

Opinions Below

There was no opinion in the District Court. The opinion of the Circuit Court of Appeals has not yet been officially recorded and is printed in the record at page 124.

Statement

The President, under the powers granted by Title 50, U. S. C. A., Sections 21, *et seq.*, issued a proclamation on January 14, 1942 (3 CFR, Cum. Supp., Proc. 2537), requiring all enemy aliens to register in accordance with detailed regulations of the Attorney General of the United States (January 22, 1942, 28 CFR, Cum. Supp., 30.51-30.63). The petitioner, registered under the Alien Registration Act of 1940 as a German subject, filed an application, in February, 1942, for a Certificate of Identification as an Enemy Alien (R. 103-106). In response to a question on the face of the application blank directing the applicant to, "Name the clubs, organizations and societies of which you have been a member or with which you have been affiliated at any time during the past 5 years," he stated, "Krug's Credit Union, Jamaica, New York" (R. 105). On the basis of this answer, he was indicted for having made a false statement, in violation of Title 50, U. S. C. A., Section 80, because he

made no disclosure of the fact that he filed an application in 1940 with the German Consulate for membership in the Nationalsocialistische Deutsche Arbeiterpartei (National Socialist German Workers Party), commonly known as the Nazi Party.

The record shows that petitioner never took an oath or was inducted as a member of the Nazi Party, and his status within that organization was that of an "anwaerter," a person recognized by the rules of the party as an "applicant" or "probationer" (R. 9, 18, 31-2). He was tried and convicted by a jury in the United States District Court for the Eastern District and sentenced to a term of fifteen months' imprisonment. His conviction was affirmed on appeal to the Circuit Court of Appeals and he has been released on bail pending appeal to this Court.

Questions Presented

1. Is the presentation of a false claim or statement, in violation of the rules and regulations governing the conduct of enemy aliens promulgated by the Attorney General of the United States, pursuant to the authority of a Presidential Proclamation issued under Title 50, U. S. C. A., Sections 21, *et seq.*, punishable exclusively by the penalties provided by that title, or may the penal provisions of Title 18, U. S. C. A., Section 80, be invoked?

2. Does the failure and neglect of a person to state that he is an applicant for membership in the Nazi Party in response to a question on an application for a Certificate of Identification as an enemy alien requiring him to, "Name the clubs, organizations and societies of which you have been a member or with which you have been affiliated at any time during the past 5 years," constitute the presentation of a false claim or statement within the meaning of Title 18, U. S. C. A., Section 80?

Specification of Errors

The Circuit Court of Appeals erred:

1. In affirming the judgment of conviction.

2. In holding that a violation of the rules and regulations governing the conduct of enemy aliens is punishable under the provisions of Title 18, U. S. C. A., Section 80.

3. In holding that the answer made by the petitioner on his application for a Certificate of Identification constituted a crime within the meaning of Title 18, U. S. C. A., Section 80.

Reasons for the Allowance of the Writ

The question in this case is one of Federal law which has not been, but should be, settled by this Court. It is a matter of great importance not only to the petitioner, but to the thousands of aliens registered under the Alien Registration Acts, who may be subject to criminal prosecution for wilful or unintentional violation of the rules and regulations promulgated for the control of their conduct.

The question of whether a violation of these rules and regulations is to be prosecuted and punished under the provisions of Section 23, Title 50, U. S. C. A., which apply exclusively to enemy aliens, or whether it is proper to base a prosecution under the provisions of Title 18, U. S. C. A., Section 80, which are applicable to all persons who wilfully make false claims in any matter within the jurisdiction of any department or agency of the United States, presents an issue which should be determined and settled by this Court.

The decision of the Circuit Court of Appeals holding that the prosecution, conviction and punishment of petitioner under Title 18, U. S. C. A., Section 80, is proper, is an apparent departure from the Acts of Congress which define and prescribe the penalties for violations of the Alien Registration Acts. Punishment of violators under Title 18 is greater than punishment under Title 50, and under the established facts there is serious doubt whether any crime has been committed within the meaning of the crimes defined in Title 18, U. S. C. A., Section 80.

WHEREFORE, petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain, to be named therein, a full and complete transcript of the record and of all proceedings of the said Circuit Court of Appeals in this case; and that the judgment and order of the said Circuit Court of Appeals be reversed and that the petitioner be granted such other and further relief as to this Honorable Court may seem just and proper.

Respectfully submitted,

EDWARD V. BRODERICK,
Counsel for Petitioner.